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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,548	10/29/2002	Shannon Panzo	PAN 1029	7681

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,548

Applicant(s)

PANZO ET AL.

Examiner

Steven L. Weinstein

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/29/02

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Applicants' response filed 3/11/05 to the restriction requirement mailed 2/11/05 is hereby acknowledged. Applicants have elected Group I, claims 1-8 without traverse. Accordingly, claims 9-12, drawn to the non-elected invention, have been withdrawn from further consideration, and an action on the merits of claims 1-8 follows. It is noted that an obvious typographical error was made in applicants' response. The response cites claims 1 and 2 as the claims of Group I when clearly Group I includes claims 1-8.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landsberg (GB. 279,758 11/27) in view of White (GB 24,092 1909), further in view of gourmetsleuth.com, the Dictionary of American Regional English, Barnes&Noble.com, and tTheagle.com, further in view of Product Alert (V. 27, n. 20, 10/27/97), Nishi(Jp 2-16934), and Sunset (2/93, v.190 n. 2, p 104), further in view of Chapman (2,281,267) Christensen (Canada 655,333), Lulei (DE 20110645), Rossi et al (3,312,555), and McGinnis (2,969,298).

In regard to claim 1, Landsberg discloses a dosage beverage sweetener utensil comprising an immersion portion configured to have a width substantially greater than thickness, thereby defining a broad and thin shaped first end, and a handle portion forming a second end and connected to said immersion portion and wherein the immersion portion is formed of sugar of unspecified type. Claim 1 differs from Landsberg in the recitation that the handle portion is also formed of sugar, whereas Landsberg discloses a handle formed of inedible material. Whether the handle portion is also edible or not is seen to have been an obvious matter of choice and/or design, especially since as evidenced by White, it was notoriously conventional to make a utensil entirely from edible material. Claim 1 further differs from Landsberg in the recitation

that the sugar is "cooked and formed" raw cane sugar. It is not entirely clear what this phrase means. Cooked and formed raw cane sugar could indicate sugar that has been heated and refined and then pressure molded so that it is thus no longer "raw" sugar. The phrase could also mean raw sugar that has only been cooked to allow it to be cast in a mold but still is raw unrefined sugar. For purposes of examination, the claims will be construed as referring to the latter. Note too, the claims do not appear to distinguish between sugar per se and a candy such as a lollipop containing raw sugar.

In any case, as evidenced by the Dictionary of American Regional English, it is notoriously well known to cast heated (i.e. boiled), unrefined sugar into a predetermined shape for use as a sweetener. As evidenced by the Dictionary, gourmetsleuth.com and theeagle.com, this product with various names including piloncillo is a very old, traditional, unrefined, molded sugar/sweetener. The Barnes&Noble reference is employed just to establish the date of the Dictionary. This product, with its natural impurities, would inherently contain the recited interstitial point defects, toughening the molded product, just as applicants unrefined, molded product does. In fact, the art clearly teaches that the unrefined molded sugar is very hard. Theeagle.com reference further describes this old, traditional product. Product Alert, Nishi and Sunset, are further evidence that it was well established to cast heated raw or partially raw sugar into shapes as well as making cubes of unrefined sugar. To modify Landsberg and employ a raw or unrefined sugar to form the sweetener utensil is seen to have been an obvious substitution of one moldable, conventional sugar based product for another moldable, conventional sugar based product. Chapman can be relied on as further evidence of casting sugar to assume at least part of a utensil shape (Fig 6); Christensen is further evidence to show

utensils with wide sugar based immersion portions; Lulei is further evidence to show the use of all types of sugar as part of a stick stirrer including the use of brown sugar; Rossi et al teaches casting sugar stirring utensils is conventional; and finally, McGinnis indicates that impurities in sugar such as beet sugar are beneficial in candy making. In regard to claim 2, the particular dimensions of the utensil, if not inherent in the art taken as a whole, which teaches wide immersion portions, would, in any case, have been an obvious matter of routine determination. Similarly, for claims 3-5. In regard to claim 6, the particular concentration of the raw sugar is also have been an obvious matter of routine determination. In regard to claims 7 and 8, the particular dosage imparted to the utensil is seen to have been an obvious matter of choice and/or design.

Claims 1-8 are rejected under 35 USC 112, first paragraph as being non-enabling. The phrase "cooked and formed raw sugar" is not sufficiently defined in the specification for the reasons given above.

Claims 1-8 are rejected under 35 USC 112, second paragraph as being indefinite. The phrase "cooked and formed raw sugar" is confusing for the reasons given above.

The remainder of the references cited on the USPTO 890 form are cited as art of interest.

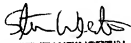
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
April 8, 2005


STEVE WEINSTEIN
PRIMARY EXAMINER

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